IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

Crl.MC.No. 2260 of 2006()

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CC.2/2006 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONERS: SECOND & THIRD ACCUSED

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1. SHEREEF ERAMBATH, S/O. ABDU HAJI,
   VADAKKAMKARA KIZHAKKEKULAMBU,
   P.O.VADAKKAMKARA, VIA MANKADA,
   MALAPPURAM DISTRICT.

2. ERAMBATH RASHEED, S/O. ABDU HAJI,
   VADAKKAMKARA KIZHAKKEKULAMBU,
   P.O.VADAKKAMKARA, VIA MANKADA,
   MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: COMPLAINANT / STATE

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1. THANKAYATHIL SAIDALAVI,
   S/O. MAMMU HAJI, VADAKKAMKARA,
   MAKARAPARAMBA, MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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Crl.M.C.No.2260 of 2006

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Dated this the 28th day of November 2006

**O R D E R**

The petitioners are accused 2 and 3 in a prosecution initiated interalia under Section 326 read with 34 I.P.C. The alleged incident had taken place on 07/06/2003 at about 6 a.m. The respondent/complainant had allegedly suffered grievous hurt at the hands of the three accused persons. The F.I.R was lodged by the defacto complainant promptly when he was undergoing treatment at the hospital. The police commenced investigation and ultimately filed final report raising allegations only against one of the three persons arrayed as accused in the F.I statement, namely third accused shown in the F.I.R, one Mujeeb. The final report is dated 12/06/2003. Aggrieved by the final report, the respondent/complainant filed a private complaint (copy of which is produced as Annexure B). In the said complaint, allegations raised in the F.I statement were repeated by the defacto complainant. The learned Magistrate, after observing the procedure prescribed by law, proceeded to pass the impugned order on 05/01/2006 which reads as follows:

> "Complainant present. Since a prima facie case is made out against the accused under Section 341,323,324,326 r/w 34 I.P.C, complainant is taken on file as C.C.2/2006. Issue summons to all accused. Posted 03/03/2006."

2. The petitioners, who are shown as accused 2 and 3 in the private complaint has come to this court with the petition under Section 426 Cr.P.C with the prayer to quash the proceedings initiated against the petitioners. The crux of the contentions raised by the petitioners is that the allegations against them are totally false. Police, after investigation, had filed a charge sheet only against the first accused (third accused in the F.I.R) and the petitioners were exonerated by the police. In these circumstances, the subsequent cognizance taken by the learned Magistrate against the final report submitted by the police is not justified. Powers under Section 482 Cr.P.C may be invoked to quash the proceedings, it is prayed.

3. At this stage of the proceedings, I shall carefully avoid any expression of opinion on the acceptability of the allegations that the petitioners herein (accused 2 and 3) have committed any offence. Suffice it to say that the F.I statement lodged promptly on the date of occurrence itself, that is 07/06/2003 ( a copy of which is produced before the court as Annexure E) clearly shows that the defacto complainant had raised specific allegations against all the three accused persons including the petitioners herein. That grievous hurt was suffered by the defacto complainant is not seriously disputed and

that assertion is endorsed by the final report submitted by the police also.

4. At the present stage and with the available materials, there are absolutely no circumstances which can persuade this court to hold that the allegations against the petitioners are false and vexatious. There are no circumstances to justify the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. At the present stage, the contention that the allegations raised against the petitioners are false, cannot certainly be decided by this court. The petitioners will have to participate in the enquiry and claim the relief of discharge or acquittal at the appropriate stage.

5. With the above observation, this Crl.M.C is dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioners to raise all necessary relevant and appropriate contentions before the learned Magistrate.

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J**

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006